

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND

THE HON'BLE MR JUSTICE D.APPA RAO

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WRIT PETITION No.7454 OF 2006

Between:

M/s.Sai Krishna Fertilizers,
Narasaraopet, Guntur District,
Represented by its partner
Vutukuri Madhusudhana Rao,

..... PETITIONER

AND

The Commercial Tax Officer,
Narasaraopet, Guntur District.

....RESPONDENTS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION No.7454 OF 2006

O R D E R

(Per Sri Justice J.Chelameswar)

This writ petition is filed with a prayer as follows:

“.....Hon’ble Court may be pleased to issue an appropriate writ, order or direction particularly in the nature of Writ of Mandamus declaring the action on the part of the respondent in ignoring/overlooking or in not considering the written objections filed by the petitioner on 8-9-2005 as evident from the office seal of the respondent submitted in response to the notification of proposed refusal in VAT-117 dt.2-9-2005 and consequently set aside the impugned proceeding dt.14-9-2005 in VAT 128 in TIN No.28640204358 and direct the respondent to consider the claim of the petitioner for grant of sales tax paid in respect of the opening stock of fertilizers as on 1-4-2005 already made in terms of claim application in Form VAT-115 supported by statement of purchases and grant such other relief ...”

The petitioner represented by one of its partner claims the benefit of VAT contemplated under Section 13 of the Andhra Pradesh Value Added Tax Act. 2005 (Act No.5 of 2005). Under Sub-Section (2) (a) of Section 13, a dealer, registered as a VAT dealer on the date of commencement of the Act, is entitled to claim input tax credit for the sales tax paid under Andhra Pradesh General Sales Tax Act on the stocks held by him in the State on the date of commencement of the Act subject to various conditions prescribed by the Rules.

According to the affidavit filed in support of the writ petition and also the documents filed, the petitioner appears to have filed an application seeking the input tax credit. The respondent by his proceedings dated 02.09.2005 indicated the reasons for which the application is proposed to be rejected and put the petitioner on notice calling for his objections, if any, for the said proposal. The petitioner claims to have filed his objections and whereas the respondent rejected the objections filed to avail the benefit under Section 13 (2)(a) of the Act on the ground that the petitioner did not respond to the notice, referred to earlier. Whether there was any response from the

petitioner to the notice of the respondent or not, is a question of fact and that can be decided on an examination of evidence. The order of rejection dated 14.09.2005 is admittedly an appealable order. The petitioner did not avail the remedy of appeal, and approached this Court by way of the present writ petition, which is filed on 13.04.2006 i.e. after a lapse of more than six months.

Learned counsel for the petitioner submitted that though the remedy of appeal is available against the impugned order, the same could not be availed by the petitioner as the deponent of the affidavit filed in support of the writ petition stated that he could not move because of the ailment (Inter Vertebral Disc Prolapse at L5-S) and he was advised bed rest from 02.10.2005 to 30.03.2006. In support of his claim of sickness, the deponent filed a medical certificate dated 02.04.2006 issued by a private medical practitioner to the said effect.

We do not find that the explanation given by the petitioner is satisfactory for not preferring the appeal within the time prescribed for the reason that the petitioner is a partnership firm. The deponent of the affidavit is only one of the partners in the firm as described by him in the affidavit filed in support of the writ petition and he is not even the managing partner of the firm. In the circumstances, even if the ailment of the petitioner is accepted to be true, in our view the firm was not so disabled as to pursue its legal remedies.

In the circumstances, we do not see any reason to admit the writ petition and the same is accordingly dismissed at the stage of admission itself.

JUSTICE J.CHELAMESWAR

JUSTICE D.APPA RAO

20TH JUNE, 2006

PGS

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND

THE HON'BLE MR JUSTICE

D.APPA RAO

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